REMARKS/ARGUMENTS

Claims 1, 3 and 5-10 are now under consideration.

All claims are now presented as method claims, pursuant to original Claims 22 and 23. All claims now recite the fabric softening agent (original Claim 23) as one of the defining elements. It is submitted that all amendments are fully supported by Claims 1, 3 and 5-10, with reference to Claims 22 and 23, all as earlier considered. Entry of the Amendments is therefore requested.

For the record, the deletion/conversion of all composition claims to method claims is without prejudice to pursuing said composition claims in continuation applications, as may be appropriate.

Formal Matters

For the record, there are no objections or rejections under 35 USC 112 outstanding.

Rejections Under §103

Only Claims 1, 3 and 5-13 remain rjected under §103 over EP 925,776. In the Office Action, the Examiner has noted that, "Claims 22 and 23, being process claims, give weight to the method of preparing the particle and are not obvious over the EP." (Office Action, page 3.)

Since all remaining claims have now been amended to comport with Claims 22/23 (both now cancelled as redundant) it is submitted that no further issues regarding patentability under §103 remain to be resolved. Withdrawal of the rjections on this basis is therefore requested.

Obviousness-Type Double Patenting Rejections

All claims, including the method claims, stand rejected over copending Application 10/698,309, for reasons of record.

Applicants respectfully traverse the rejections on this basis, in view of the amendments to the claims presented herein.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. The Court dealt with the issue in, for example *In re Thorington, Gerald Schiazzano and Joes Shurgan*, 57 CCPA 750 418 F.2d 528; 1969 CCPA LEXIS 234; 163 USPQ (BNA) 644 (1969), noting the unreasonable extension of the patent monopoly associated with two non-patentably distinguishable applications.

Yet, it is submitted that the claims now under consideration in the present applications and those of 10/698,309 are, in fact, patentably distinct.

Briefly stated, 10/698,309 relates to compositions which comprise a "personal care adjunct ingredient," whereas the present claims require a fabric softener.

Moreover, the personal care adjunct ingredients of '309 (published as US2004/0091445 A1, May 13, 2004) are listed at [0218] through [0222] and do not appear to suggest fabric softeners.

Stated simply: To infringe the claims of '309 requires a personal care ingredient; to infringe the present claims requires a fabric softener. Given these limitations of their new respective claims, any patents granted on both '309 and the present application clearly could each independently co-exist without fear of any unjustified or improper extension of time or duplicative harassment of a prospectaive user of either of the distinct inventions claimed therein. Reconsideration and withdrawal of the rejections on this basis are therefore requested.

Appl. No. 10/695,282
Docket No. 9083M&
Amdt. dated 8/28/07
Reply to Office Action mailed on 6/29/07
Customer No. 27752

In light of the foregoing, early and favorable action in the case is requested

Respectfully submitted,

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